IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2801 OF 2002

Vasanti R.Shetty .. Petitioner

vs

Municipal Corpn of Gr.Bombay & ors.. Respondents

Mr. P.M.Shah with Mr K.Kharawala for Petitioner
Mr A.R.Joshi for Respt no.1 to 4
Mr.L.T.Satelkar for Respt nos.5 to 7.
Mr J.P.Sen i/b Federal Rashmikant for Respt.nos.8 to 11.

CORAM : D.G.KARNIK, J

DATE: 22nd June, 2005

P.C.

1. By this petition the petitioner challenges the order dated 19th November, 2001 passed by the respondent no.4 rejecting the petitioner's application for re-erection of her stall which is

alleged to have been demolished illegally.

2. Since prior to 1974 there existed a wooden stall placed or erected on the municipal premises of the respondent nos. 1 to 4 on a pavement outside the premises of respondent nos. 10 and 11. The stall was authorised in the sense that the respondent nos. 1 to 4 had granted a licence to the owner for carrying on the business of the sale of Mafco products in the said stall. The licence was granted prior to the year 1974. It appears that in the year 1979 husband of the petitioner purchased the running business along with the stall from the original owner. After the death of her husband the petitioner had been running the stall. In May, 1980 the trade licence for carrying on the business in the said stall was transferred in the name of the petitioner by the respondent nos. 1 to 4. It appears that in addition to the sale of mafco products the petitioner was selling some other products. Though it is alleged that the petitioner was also selling gutkha, the petitioner has denied the same.

3. On 14th August, 2000 the officers of the

respondent no. 1 Municipal Corporation razed the stall of the petitioners without notice. The petitioner lodged a police complaint and subsequently tried to re-erect the stall around 22nd August, 2000. However, the respondent nos. 10 and 11 who were running a school in the vicinity prevented the reerection. The respondent nos. 10 and 11 also approached this Court by filing a Writ Petition No.1854 of 2000 and obtained an exparte order restraining the erection of the stall. On 21st September, 2000 the petitioner took out a motion bearing Notice of Motion No.326 of 2000 for setting aside the ex parte stay. By an order dated 2nd May 2001 passed in the petitioner's motion she was permitted to approach the respondent no.1 with an application for permission to re-erect the stall. Accordingly, the petitioner made an representation to the respondent no. 1 for permission for re-erection of the stall. By the impugned order dated 19th November, 2001 the representation was rejected. Thereupon, the petitioner took out a motion bearing Notice of Motion No.399 of 2001 in W.P. No.1854 of 2000 for quashing the order dated 19th November, 2001. The motion as well as the writ petition came up for

hearing before a Division Bench on 30th July, 2002. By an order dated 30th July, 2002 the Division Bench held that in view of the order dated 19th November, 2001 passed by the Municipal Authority rejecting the petitioner's application for permission for re-erection, the Writ Petition and the motion would not survive. The Division Bench however, permitted the petitioner herein to challenge the legality and validity of the impugned order dated 19th November, 2001 by filing appropriate proceedings. The petitioner has accordingly filed this petition challenging the impugned order dated 19th November, 2001.

4. It is not disputed that the stall was erected prior to 1974 and that trade licence under the Bombay Shops and Establishments Act was also issued to the initial owner in the year 1974. The said licence was transferred in the name of the petitioner in May, 1980. The petitioner had produced before the respondent no.4 the original shop and establisment licence No.1106. The petitioner had also produced before the respondent no. 4 in all 18 documents which have been referred to in his order. The said documents consist of

receipts for payment made towards the trade refuse charges, receipts for payment of renewal of registration of licence, letter from the original owner Mr Dhurandhar regarding transferring the business in the year 1980, bills cum receipts of the payment of electricity and telephone bills etc. It is thus clear that the stall was in existence for more than 25 years atleast since 1974 and the business was carried on therein with the permission of the respondent nos. 1 to 4 after obtaining the necessary shop Act licence. It must be presumed that the respondents must have visited the stall before granting the shop Act licence in the year 1974 and in the regular course of inspections under the Shops and Establishments Act.

5. In Sopan Maruti Thopte vs Pune Municipal Corporation reported in AIR 1996 BOMBAY 304 a Division Bench of this Court has laid down that after 1st May, 1996 the Bombay Municipal Corporation or any other municipal corporation constituted under the Bombay Provincial Municipal Corporation Act would have follow certain procedure before taking action for demolition even of an unauthorised structure under section 351 of the

Bombay Municipal Corporation Act or under section 260 of the Bombay Provincial Municipal Corporation Act. The procedure requires issuance of a notice and giving to the person concerned 15 days time for submitting a reply and showing cause. Ofcourse where exception where a person is in the process erecting an unauthorised structure it can be demolished by issuing a shorter notice of 24 hours. However, in respect of an unauthorised structure which is in existence for quite sometime the respondent nos. 1 to 4, as held by the Division Bench, must issue a notice of atleast 15 days before effecting demolition. Admittedly, in the present case the structure was in existence since 1974 and the the respondent no. 1. corporation had not only on record of it but had issued a licence under the Shops and Establishments Act to it and transferred it in the name of the petitioner. In the circumstances it was incumbent upon the respondent nos. 1 to 4 to issue atleast 15 days notice to the petitioner before demolishing the stall even if it is assumed to be unauthorised. The petitioner is and was lawfully carrying on the business after obtaining the necessary licence for a period of 20 years. One day she suddenly found

her premises to have been razed by the respondents without any notice as required by law declared by the Division Bench of this Court. Thereafter she was prevented from carrying out construction by the respondent nos. 10 and 11 who had obtained exparte order of injunction/stay. In the writ petition the applied for permission but the writ petition was disposed of and she was directed to approach the respondent nos. 1 to 4 for obtaining the necessary permission. If the structure was initially demolished by the respondents nos. 1 to 4 illegally they ought to have granted permission to the petitioner to reconstruct. The petitioner is a widow and her livelyhood depends upon the income of the business carried on by her from the said stall, Equities are in her favour. She has been wronged by the illegal action of the respondent nos. 1 to 4 in demolishing the stall without notice as was required of them in view of the judgment of the Division Bench in the case of Sopan Maruti Thatte (supra).

6. Learned counsel for the respondent nos. 1 to 4 states that the stall is situated in a non-hawking zone and therefore permission for the construction

cannot be granted. There is nothing on record to show that the stall was situated in non-hawking zone. The impugned order does not specify that the stall was in a non-hawking zone. Even in the affidavit in reply filed in this Writ Petition the respondent nos. 1 to 4 have not stated that the stall was situated in a non-hawking zone. In the circumstances, the respondent nos. 1 to 4 cannot be allowed to make oral submission that the stall was situated in non-hawking zone and therefore permission cannot be granted. If at all the premises are situated in a non-hawking zone the respondents after re-erection of the stall are free to take action as are available to them in law after issuing appropriate notice to show cause to the petitioner. However, they must forthwith redress the wrong done by them to the petitioner in demolishing the stall which had been given trade licence and was demolished contrary to the decision of the Division Bench in Sopan Maruti Thopate's case.

7. In the circumstances, petition is allowed and the respondent nos. 1 to 4 are directed to grant permission to the petitioner to re-erect the stall

in place of the old stall. Needless to say that the new structure shall not be in excess of the old structure and shall be only of the nature of original structure. Rule made absolute this extent. Parties shall bear and pay their own costs.

8. At the request of the learned counsel for the respondent nos. 1 to 4 operation of this order is stayed for a period of two weeks.

D.G.KARNIK, J